## APPENDIX A

SUPREME COURT OF HAWAII—1

SYLLABUS

IN THE MATTER OF RALPH E. COREY, ATTORNEY AT LAW

No. 5344

OCTOBER 19, 1973

RICHARDSON, C. J., ABE, LEVINSON AND KOBAYASHI, J. J., AND CIRCUIT JUDGE VITOUSEK IN PLACE OF MARUMOTO, J., RECUSED

ATTORNEY AND CLIENT—*jurisdiction of courts.*

The supreme court has authority over matters concerning disciplinary action of members of the bar.

SAME—*character and conduct.*

Active participation in fraud or even silence of an attorney where he has knowledge of the current perpetration of a fraud by his client upon another is professional misconduct which merits disciplinary action by the court.

SAME—*same.*

An attorney engaged in practice of law is held to the same highest standards of ethical and moral uprightness and fair dealing when acting as a businessman or when acting as a lawyer and is subject to disciplinary action if he fails to maintain those standards in either capacity.

SAME—*same.*

While commercial activities are not forbidden a lawyer, he must see that his dealings as a businessman are as upright as should be his dealings in his professional capacity.

*Per Curiam.* This is an original proceeding initiated by this court on an order to show cause issued by this court ordering respondent Ralph E. Corey, Esq., to file a written statement showing cause why he should not be censured,

suspended, or disbarred from all the courts of the State of Hawaii based on the record of the case entitled *State Savings and Loan Association* v. *Ralph E. Corey and Robert M. Kimbrough and Wallace C. S. Young*, No. 5021. The attorney general of the State of Hawaii was requested, personally or through a deputy, to appear in the proceeding as amicus curiae.

By order of this court filed November 16, 1972, this court ordered, *inter alia*, as follows:

> a. Respondent's request for permission to inspect the records and files of the Supreme Court Rule 16(c) Commission relating to this matter is granted:
>
> b. The attorney general, or his deputy appearing in this matter, shall serve upon the respondent's attorney and file with the clerk of this court a specification of such portions of the transcript and exhibits in said State Savings case, No. 5021, as, in his opinion, would support action by this court in censuring, suspending or disbarring respondent, together with a memorandum of law in support of such opinion;
>
> c. Respondent shall serve upon the attorney general and file with the clerk of this court a specification of such portions of the transcript and exhibits in said State Savings case, No. 5021, as, in his opinion, indicate that this court should not censure, suspend or disbar respondent, *together with such offer of proof as respondent may wish to make in additional support of respondent's position*, together with a memorandum of law in support of respondent's opinion, *it being understood that the attorney general or his deputy shall have the burden* of proof in justifying disciplinary action against the respondent. (Emphasis added).

The specifications and memoranda of law were filed by the attorney general and the respondent. However, though given the opportunity, the respondent failed to

file any offer of proof which would additionally support respondent's position herein.

This court has jurisdiction over matters concerning disciplinary action of members of the bar. HRS § 605-1, as amended by Act 184, sec. 1(a), S.L.H. 1972.

After a thorough and complete review of the record of said case we are of the opinion that respondent is guilty of misrepresentation amounting to fraud and thus as an attorney is guilty of professional misconduct. The record of said case shows that respondent, who was a substantial shareholder, a corporate officer (vice president) and corporate attorney of Kauaian Development Company, a corporation, committed said misrepresentation in his effort to obtain for said corporation a mortgage loan from State Savings and Loan Association for the construction of a hotel-condominium.

A brief summary of the facts herein is as follows:

Respondent, as attorney and corporate officer, was fully aware of the fact that there were two construction contracts:

1. Construction contract dated October 28, 1963, stating in pertinent parts as follows:

WITNESSETH, that the Contractor [Better Built Hawaii, Ltd.] and the Owner [Kauaian Development Company, Inc.] for the considerations hereinafter named agree as follows:

. . . .

The Contractor shall furnish all of the materials and perform all of the work shown on the Drawings and described in the Specifications entitled "The Kauaian Hyatt House" prepared by . . . , acting as and in these Contract Documents entitled the Architect; and shall do everything required by this Agreement, the General Conditions of the Contract, the Specifications and the Drawings.

. . . .

The Owner shall pay the Contractor for the performance of the Contract, subject to additions and deductions provided therein, in current funds as follows: SEVEN HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($761,500.00). THE OWNER SHALL HAVE THE OPTION TO PAY THE CONTRACTOR AN ALTERNATE CONTRACT AMOUNT OF: COST PLUS 7%, COST BEING DETERMINED BY STANDARD A.I.A. ACCOUNTING PROCEDURE.

2. Construction Contract dated November 8, 1963, executed by and between Better Built Hawaii, Ltd., as contractor, and Kauaian Development Company, Inc., as owner, stating as follows:

It is agreed between Better Built Hawaii, Inc. and Kauaian Development Company, Inc. that a new cost figure has been reached relative to the Kauaian Hyatt House and subject price is now $600,000 total cost for all contractual work, including rock wall and fill and pier facilities. In addition, an agreement is reached whereby any savings under $600,000 will be divided equally between Better Built Hawaii, Inc. and Kauaian Development Company, Inc. In addition, Mr. Emil A. Offer, and/or Better Built Hawaii, Inc. will receive $60,000 worth of apartments in the Kauaian Hyatt House upon completion of the contract.

The construction contract dated October 28, 1963, was not for the purpose of actual construction but was executed only for the purpose of obtaining construction financing from State Savings and Loan Association. However, State Savings and Loan Association was not informed that said construction contract was for financing purposes only and not for actual construction purposes and was led to believe that the said contract was the actual construction contract. The actual contract for

construction purposes was the contract dated November 8, 1963. Notwithstanding the existence of the actual construction contract, respondent as said corporate attorney and corporate officer represented to State Savings and Loan Association that the cost of construction of the improvements was determined on the construction contract referring to a maximum amount of $761,000.00, and respondent failed to inform and/or cause to have the said mortgagee informed that the actual construction contract cost was $600,000.00 plus rather than premised on the contract referring to the sum of $761,000.00. Said representation by respondent was by direct actions and also by way of acquiescence through silence on the part of respondent during various meetings held with the mortgagee in their discussions, negotiations and consummation of the mortgage loan.

The record of the present proceeding substantiates the fact to be that the purpose of respondent in failing to inform the mortgagee of the actual cost of construction in the sum of $600,000.00 plus was to acquire a larger mortgage loan than would have been possible if the actual construction contract had been used for the financing purposes. Mortgagee, not knowing of the actual construction contract and relying on respondent's representation that the cost of construction was determined on the contract referring to the sum of $761,000.00, did on January 17, 1964, grant the mortgage loan in question to respondent's corporation.

The conduct of the respondent was in violation of the following canons of ethics which were in effect when said misrepresentation occurred:[1]

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[1] Under Rule 16(a) of the Rules of the Supreme Court of Hawaii which were applicable at the time the misrepresentation occurred in November-December, 1963, the cannons of professional ethics as adopted by the American Bar Association were in effect and are applied here.

Canon 15—HOW FAR A LAWYER MAY GO IN SUPPORTING A CLIENT'S CAUSE . . . . The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

Canon 16—RESTRAINING CLIENTS FROM IMPROPRIETIES. A lawyer should use his best efforts to restrain and to prevent his clients from doing these things which the lawyer himself ought not to do, . . . If a client persists in such wrongdoing the lawyer should terminate their relation.

Canon 29 — UPHOLDING THE HONOR OF THE PROFESSION . . . . He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

Canon 32 — THE LAWYER'S DUTY IN ITS LAST ANALYSIS. No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation.

. . .

In a case involving the participation of an attorney in the fraudulent sale of a bakery, the New York Supreme Court, Appellate Division, found the attorney "... guilty of professional misconduct by reason of his active participation in the fraud, his silence when he knew the buyer

was being defrauded and his violation of a fiduciary relationship as escrow holder of the moneys paid by the buyer", and disbarred him. *In re Sherman,* 65 N.Y.S.2d 802, 803, 271 A.D. 462 (1946).

> It is well settled that an attorney engaged in practice of law is held to the same "highest standards of ethical and moral uprightness and fair dealing" when acting as a businessman or when acting as a lawyer and is subject to disciplinary action if he fails to maintain those standards in either capacity. *Marco* v. *Dulles,* 169 F.Supp. 622, 631 (S.D.N.Y. 1959).
>
> While commercial activities are not forbidden a lawyer, he "must see that his dealings as a business man are as upright as should be his dealings in his professional capacity" . . . *Matter of Chartoff,* 116 A.D.2d 277, 280, 227 N.Y.S.2d 578, 581 (1962).

The above stated principles regarding the conduct of an attorney either in his professional capacity or as a businessman are those for which we find Mr. Corey has shown a complete disregard.

The respondent has failed to show cause why he should not be censured, suspended or disbarred. Issues raised in this proceeding by respondent are without merit.

We therefore, based on the record herein, suspend his license to practice law before all the courts of the State of Hawaii for a period of six months effective thirty days after entry of judgment in this case by this court.

*Helen B. Ryan (Ryan and Ryan* of counsel) for respondent.

*E. John McConnell, Jr.,* Deputy Attorney General (*George Pai,* Attorney General, of counsel) for State of Hawaii, amicus curiae.

## APPENDIX B

No. 5344

IN THE SUPREME COURT OF THE STATE OF HAWAII
OCTOBER TERM 1973

In the Matter of

RALPH E. COREY,
Attorney at Law

### JUDGMENT

Pursuant to the opinions of the Supreme Court of the State of Hawaii filed in this original proceeding on October 19, 1973 and November 5, 1973;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the license of respondent Ralph E. Corey, Esq., to practice law before all the courts of the State of Hawaii be suspended for a period of six months;

IT IS HEREBY FURTHER ORDERED, ADJUDICATED AND DECREED, that such suspension shall be stayed on the following terms:

a) that respondent, without delay, initiate his contemplated petition for writ of certiorari or appeal to the Supreme Court of the United States and expeditiously complete his requirements for said petition or appeal;

b) that the stay granted herein shall remain in effect until the conclusion of the review of the judgment of this court by the Supreme Court of the United States;

c) that, in the event the Supreme Court of the United States denies respondent's petition for a writ of certiorari or appeal or sustains the judgment of this Court in suspending respondent's license to practice law, the said suspension shall become effective thirty days from the date

of said denial or order of the Supreme Court of the United States.

DATED: Honolulu, Hawaii, Nov. 28, 1973.

By the Court:
Clerk

APPROVED:

/s/ BERT T. KOBAYASHI
Bert T. Kobayashi
Justice

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## APPENDIX C

IN THE SUPREME COURT OF THE STATE OF HAWAII
OCTOBER TERM 1973

**PETITION FOR REHEARING AND IN THE ALTERNATIVE A MOTION FOR STAY PENDING PETITION FOR A WRIT OF CERTIORARI**

NOVEMBER 5, 1973

RICHARDSON, C. J., ABE, LEVINSON AND KOBAYASHI, J. J., AND CIRCUIT JUDGE VITOUSEK IN PLACE OF MARUMOTO, J., RECUSED

*Per Curiam.* The petition for rehearing is denied without argument.

The motion for stay pending petition for a writ of certiorari to the Supreme Court of the United States is granted on the following terms:

a) that respondent, without delay, initiate his contemplated petition for writ of certiorari or appeal to the Supreme Court of the United States and expeditiously complete his requiredments for said petition or appeal;

b) that the stay granted herein shall remain in effect until the conclusion of the review of the judgment of this court by the Supreme Court of the United States;

c) that, in the event the Supreme Court of the United States denied respondent's petition for a writ of certiorari or appeal or sustains the judgment of this court in suspending respondent's license to practice law, the said suspension shall become effective thirty days from the date of said denial or order of the Supreme Court of the United States.

Helen B. Ryan (Ryan & Ryan
of counsel) for the
petition.

/s/ William R. Richardson

/s/ Kazulisan Abe

/s/ Bernard H. Levinson

/s/ Bert T. Kobayashi

/s/ Betty M. Vitousek

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## APPENDIX D

### RULES OF THE SUPREME COURT OF THE STATE OF HAWAII

### RULE 5. REHEARING

(a) *Time and Form.* A petition for rehearing may be presented only within 10 days after the filing of the opinion or ruling unless by special leave additional time is granted during such period by a justice. The petition shall briefly and distinctly state its grounds and shall include points and authorities relied on in support thereof and shall also be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay.

(b) *Argument; Reply; Allowance.* No reply to a petition for rehearing will be received unless requested by the court or by a justice who concurred in the opinion or ruling and no petition for rehearing will be granted in the absence of such a request. There shall be no oral argument on a petition for rehearing.

## RULE 10. JUDGMENT; MANDATE

*Judgment; Mandate.* In all cases a final judgment of this court pursuant to the opinion or ruling disposing of the cause before this court shall be prepared by the prevailing party and submitted to the clerk for entry and filing within 10 days. Upon presentation to the clerk, the clerk shall forthwith present the same to a justice for approval and upon approval, the same shall forthwith be entered and filed. Upon expiration of the time for filing a petition for rehearing, or if such petition has been timely filed, upon the disposition of such petition, a mandate shall issue in appeals as a matter of course informing the court below of the proceedings in this court and of any further required proceedings; provided that the mandate may issue at any time after the entry of final judgment on the order of the court. Upon motion for cause shown the mandate may be stayed or any mandate that has been issued may be recalled.

## RULE 16. UNPROFESSIONAL CONDUCT AND UNAUTHORIZED PRACTICE OF LAW

(a) *Canons.* The Canons of Professional Ethics attached hereto as Exhibit A shall govern the conduct of the members of the Hawaii Bar.

(b) *Appointment of Commission.* The court shall appoint a commission of not less than 15 members of the Hawaii Bar as commissioners of this court in proceedings involving unprofessional conduct of members of the Hawaii Bar and unauthorized practice of law by any person, and shall designate the chairman thereof. The terms of office of the commissioners shall be designated by the court. They shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to performance of their duties.

(c) *Functions, Powers and Duties of Commissioners and Committee on Inquiry; Procedure.*

(1) The commission is empowered to inquire into and investigate charges of unprofessional conduct by members of the Hawaii Bar and unauthorized practice of law by any person and, upon the filing with the commission of a written complaint of such unprofessional conduct or unauthorized practice, to hear and determine the charges and report its findings and recommendations to this court.

(2) The commission shall adopt rules for its procedure and file them with the clerk of this court. Such rules shall become effective upon approval of this court.

(3) Any person, including the Attorney General and the Bar Association, may file a charge with the commission.

(4) Whenever a charge of unprofessional conduct or of unauthorized practice of law is received, the chairman of the commission, unless otherwise ordereed by two-thirds of the commission, shall appoint a committee on inquiry consisting of 3 or more members of the bar and refer the charge to it, if in his opinion the charge alleges a violation of the canons of professional ethics or unauthorized practice of law. The chairman of the committee on inquiry shall be a commissioner.

(5) The committee on inquiry shall conduct its investigation promptly. It shall have power to summon witnesses and to hear testimony, and may conduct its investigation in such manner as may be necessary and proper to obtain all pertinent information. The respondent, i.e., the person against whom a charge has been made, shall be notified in writing by the committee of such investigation and shall have a right to be heard.

(6) The committee on inquiry shall submit a written report of its findings and recommendations to the commission. If the committee recommends that no hearing be

held on the charge of unprofessional conduct or unauthorized practice of law, and if the commission concurs with the recommendation, the matter shall be closed. The chairman shall thereupon notify the complainant and the respondent of the commission's action. If the commission does not concur with the recommendation of the committee, the commission may instruct its chairman to appoint a new committee on inquiry, and if two-thirds of the commission does not concur with the recommendation by the committee, the hearing of the charge may be held by the commission or the charge dismissed as the case may be.

(7) If the committee on inquiry recommends that a hearing be held on the charge of unprofessional conduct or unauthorized practice of law, it shall prepare and submit to the chairman of the commission a written complaint and a report in support thereof.

(8) A complaint shall be sufficiently clear and specific to inform the respondent of the alleged unprofessional conduct or unauthorized practice.

(9) Upon receipt of the complaint, the chairman of the commission shall cause a copy thereof to be served upon the respondent by personal service, together with a copy of the rules of the commssion, if any. Personal service upon the respondent may be made by any person who is at least 20 years of age, including any commissioner. In the event that the respondent cannot be found within the State of Hawaii or has departed therefrom, service may be made by registered or certified mail if his address is known. If he cannot be found within the state and if his address is not known, service may be made upon the clerk of this court. The respondent shall file with the commission a written answer to the complaint within 30 days after the date of service, which time may be extended by the chairman of the commission.

(10) If the respondent's answer involves any questions of law, a memorandum in support thereof shall be

attached to the answer. A respondent waives all defenses and objections not presented in his answer, except the defenses (a) that the complaint fails to allege acts or omissions constituting unprofessional conduct or the unauthorized practice of law; (b) that the commission lacks jurisdiction of the subject matter. If the respondent fails to file an answer in the time allowed, he shall be in default.

(11) Nine members of the commission shall constitute a quorum for determining what action is to be taken upon the recommendation of a committee on inquiry and for determining whether a hearing on the charge should be had by the commission without prior reference to a committee on inquiry. At the hearing of the complaint by the commission, the committee on inquiry, or such other attorney or attorneys as are designated by the chairman of the commission, shall present evidence in support of the allegations of the complaint. Three members of the commission shall constitute a quorum for a hearing in each case coming before it. In the event of a recessed hearing, a quorum at each hearing after the first hearing shall be three commissioners who have attended all of the previous hearings. No commissioner who was a member of the committee on inquiry investigating the charges shall be qualified to hear the matter. The hearing of such complaint by the commission shall be completely and accurately recorded.

(12) The proceedings under this rule shall not be public but shall be private and confidential unless the respondent shall in writing request otherwise. The record shall not be made public unless and until a report recommending discipline or recommending that a judgment be issued is filed with the court and the court has acted thereon.

(13) Committees on inquiry, by their chairmen, and commissioners hearing charges may administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of pertinent books, papers and

documents. Writs of subpoena shall be issued in blank by the clerk of this court upon application by any commissioner or the respondent. A witness shall be paid mileage and witness fees as provided by the law of this state in civil cases. Failure to obey any such subpoena or refusal without lawful grounds of any person to be sworn to testify or to answer any proper question shall constitute contempt of this court. Part V of the Hawaii Rules of Civil Procedure, relating to depositions and discovery, shall apply to proceedings before the commission instituted pursuant to this rule.

(14) To warrant a finding of unprofessional conduct or of unauthorized practice of law, the charge must be established by clear and convincing evidence.

(15) After the hearing, if the commission recommends discipline by the court in cases involving unprofessional conduct, or recommends a judgment of the court in cases involving unauthorized practice of law, it shall file a written report of its findings and recommendations with the court. Thereupon the matter shall be docketed in the name of the respondent. The committee on inquiry, Attorney General, or such other attorney or attorneys as are designated by the chairman of the commission, shall act as attorneys for the commission. After the filing of such report a copy thereof shall be served on the respondent as hereinbefore provided for the service of the complaint.

(16) The respondent may file exceptions to the report within 20 days from the date of service of a copy thereof or within an additional period not to exceed 20 days granted by the court for good cause shown. Unless such exceptions are predicated solely on the report, the respondent, within 10 days after the filing of such exceptions, shall file with the commission a designation of such parts of the record as he deems necessary to enable the court to pass on such exceptions, and within 10 days thereafter the attorney for the commission may file a designation of any additional

parts of the record deemed necessary to enable the court to pass on such exceptions. Thereupon the commission shall promptly certify to the court the parts of the record so designated and furnish a copy thereof to the attorney for the commission and a copy thereof to the respondent.

(17) Within 60 days after the filing of the certified record, or after the filing of exceptions if no part of the record is designated by the respondent, the respondent shall file an opening brief pursuant to the rule governing civil appeals and other briefs shall be filed as therein provided.

(18) If the respondent fails to file exceptions within the time permitted by the rule, upon motion made by the attorney for the commission the court may enter an order giving effect to the recommendations contained in the report. The court shall adopt the findings of the commission unless upon a consideration of the entire record it is of the opinion that such findings are not supported by clear and convincing evidence.

(d) *Limitations.* The jurisdiction of this court and the other courts of the State of Hawaii to grant appropriate relief in causes involving unprofessional conduct or unauthorized practice of law shall not be deemed to be limited, restricted or abrogated by anything contained in this rule.

## CANON 9

### A Lawyer Should Avoid Even the Appearance of Professional Impropriety

#### ETHICAL CONSIDERATIONS

EC 9-1 Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system.[1] A lawyer should promote public confidence in our system and in the legal profession.[2]

EC 9-2 Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer.

On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, his duty to clients or to the public should never be subordinate merely because the full discharge of his obligation may be misunderstood or may tend to subject him or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession. [3]

EC 9-3 After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists. [4]

EC 9-4 Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9-5 Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9-6 Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges

thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.[5]

DISCIPLINARY RULES

DR 9-101 Avoiding Even the Appearance of Impropriety.[6]

(A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.[7]

(B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.[8]

(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body,[9] or public official.

DR 9-102 Preserving Identity of Funds and Property of a Client.[10]

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expresses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm

must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

### 15. How Far a Lawyer May Go in Supporting a Client's Cause

Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.

### 16. Restraining Clients from Improprieties

A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct toward Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrongdoing the lawyer should terminate their relation.

### 29. Upholding the Honor of the Profession

Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either

moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

### 32. The Lawyer's Duty in Its Last Analysis

No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

## APPENDIX E

IN THE SUPREME COURT OF THE STATE OF HAWAII
OCTOBER TERM 1973

IN THE MATTER OF THE AMENDMENT

OF

THE RULES OF THE SUPREME COURT
OF THE STATE OF HAWAII.

### ORDER AMENDING RULE 16

IT IS HEREBY ORDERED that Rule 16 of the rules of this court, as amended, be further amended as follows:

RULE 16. DISCIPLINARY RULES.

16.1 *Jurisdiction.* Any attorney admitted to practice law in this State and any attorney specially admitted by a court of this State for a particular proceeding is subject to the exclusive disciplinary jurisdiction of the supreme court and the Board hereinafter established.

Nothing herein contained shall be construed to deny to any court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt, nor to prohibit any bar association from censuring a member or suspending or expelling a member from membership in the association.

16.2 *Grounds for Discipline.*

(a) The Code of Professional Responsibility, attached hereto as Exhibit A, as amended by this court, shall govern the conduct of all attorneys subjects to discipline under this Rule.

(b) Acts or omissions by an attorney which violate the Code of Professional Responsibility shall constitute misconduct and shall be ground for discipline, whether or not the act or omission occurred in the course of an attorney-

client relationship. Conviction of a crime shall similarly be ground for discipline as set forth in Rule 16.13.

16.3 *Types of Discipline.* Discipline may consist of:

(a) Disbarment by the supreme court; or

(b) Suspension by the supreme court for a period not exceeding five years; or

(c) Public censure by the supreme court; or

(d) Private reprimand by the Disciplinary Board; or

(e) Private informal admonition by Disciplinary Counsel.

16.4 *Disciplinary Board.*

(a) The supreme court shall appoint a board to be known as the "Disciplinary Board of the Hawaii Supreme Court" (herein referred to as the "Board") which shall consist of nine members of the bar of this State, one of whom shall be designated by this court as chairman and another as vice-chairman.

(b) When the Board is first appointed, three of its members shall be appointed for a term of one year, three for a term of two years and three for a term of three years. All terms thereafter shall be for three years. No member shall serve for more than two consecutive terms. The Board shall act only with the concurrence of five or more members. Members shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

(c) Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. If, in any given case, the number of Board members who may properly render a decision falls below a quorum, the supreme court shall ap-

point, for that case only, the number of ad hoc members necessary to restore the Board to full membership. Each ad hoc member shall fulfill all the responsibilities of the Board member whom he replaces.

(d) Periodically, the Chairman shall designate two Board members to review the proposed decisions of the Disciplinary Counsel, as mentioned in subsection 16.7 hereof.

(e) The Board shall exercise the powers and perform the duties conferred and imposed upon it by these Disciplinary Rules, including the power and duty:

(1) To consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of these Disciplinary Rules.

(2) To appoint a Chief Disciplinary Counsel, and such Assistant Disciplinary Counsel and staff as may from time to time be required to properly perform the functions hereinafter prescribed. The Chief Disciplinary Counsel and Assistant Disciplinary Counsel are hereinafter referred to as "Counsel".

(3) To appoint from time to time, and establish the terms of office of, an appropriate number of hearing committees.

(4) To approve assignments made annually by the Chairman for rotation of members of the Board to review for stated periods all recommended dispositions by Counsel and to authorize changes in such assignments from time to time necessitated by unforeseen circumstances.

(5) To adopt rules of procedure governing the Board and hearing committees which are not inconsistent with these Rules.

(6) To adopt and publish advisory opinions interpreting the Code of Professional Responsibility.

16.5 *Hearing Committees.*

(a) Each hearing committee shall consist of three members of the bar of this State. The Board shall designate the terms of its members and the chairman for each committee. Each committee shall act only with the concurrence of a majority of its members. Committee members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. Members shall receive no compensation for their services but may be reimbursed for their traveling and other expenses incidental to the performance of their duties.

(b) Hearing committees shall have the power and duty to conduct hearings in formal disciplinary proceedings and on petitions for reinstatement of disbarred or suspended attorneys, upon assignment by the Chairman of the Board, and to submit their findings and recommendations, together with the record of the proceeding, to the Board.

16.6 *Disciplinary Counsel.*

(a) Counsel shall not engage in private practice, except that the Board may agree to a reasonable period of transition after appointment.

(b) Counsel shall have the power and duty:

(1) With the approval of the Board, to employ and supervise staff needed for the performance of his duties.

(2) To investigate all matters involving alleged misconduct called to his attention whether by complaint or otherwise.

(3)To dispose, subject to review by members of the Board assigned by the Chairman, of all matters involving alleged misconduct by dismissal, private informal admoni-

tion or the institution of formal disciplinary proceedings before a hearing committee. Except in matters requiring dismissal because the complaint is frivolous on its face or falls outside the Board's jurisdiction, no disposition shall be recommended or undertaken by Counsel until the accused attorney shall have been afforded the opportunity to state his position with respect to the allegations against him.

(4) To file with the supreme court certificates of conviction of attorneys for crimes.

(5) To prosecute all disciplinary proceedings and proceedings to determine incapacity of attorneys before hearing committees, the Board and the supreme court.

(6) To appear at hearings conducted with respect to petitions for reinstatement of suspended or disbarred attorneys or attorneys transferred to inactive status because of disability, to examine witnesses and to submit evidence, if any, relevant thereto.

(7) To maintain permanent records of all matters processed and the disposition thereof.

(8) To assist members of the public in preparation of requests for investigation.

(9) Top perform such other duties and provide such reports as the Board shall direct.

16.7 *Procedure.*

(a) *Investigation.* All investigations, whether upon complaint or otherwise, shall be conducted by and under the supervision of Counsel. Upon the conclusion of an investigation, Counsel shall recommend dismissal, informal admonition of the attorney concerned or the institution of formal disciplinary proceedings before a hearing committee. Counsel's recommendation shall be reviewed by one of the two members of the Board assigned for that pur-

pose. If the initial reviewing member of the Board approves Counsel's recommendation, it shall be implemented. If the reviewing member of the Board disapproves Counsel's recommendation, Counsel may request further review by the other reviewing member of the Board. In the event of such second review of Counsel's recommendation, the decision by the second reviewing member of the Board shall be final. The member or members of the Board who review Counsel's recommendation shall be disqualified in any formal disciplinary proceedings in relation to the same alleged misconduct.

(b) *Formal Hearing.* Formal disciplinary proceedings before a hearing committee shall be instituted by Counsel by filing with the Board a petition which shall be sufficiently clear and specific to inform the respondent of the alleged misconduct. A copy of the petition shall be served upon the respondent. The respondent shall serve his answer upon Counsel and file the original with the Board within 20 days after the service of the petition, unless such time is extended by the Chairman. In the event the respondent fails to answer, the charges shall be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the Chairman to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect. Following the service of the answer or upon failure to answer, the matter shall be assigned by the Chairman to a hearing committee. If there are any issues of fact raised by the pleadings or if the respondent requests the opportunity to be heard in mitigation, the hearing committee shall serve a notice of hearing upon Counsel and the respondent, or his counsel, stating the date and place of the hearing. At every hearing wherein factual issues are to be resolved, the respondent shall have a full opportunity to confront and cross examine the complainant and the other witnesses presented by Counsel and to present evidence on his own behalf. The hearing com-

mittee shall, in every case, submit a report containing its findings and recommendations, together with a record of its proceedings, to the Board within 60 days after the conclusion of its hearing, including the submission of briefs, if any. The findings of the hearing committees shall be supported by a preponderance of the evidence. The hearing committee shall not be bound by the formal rules of evidence, but it shall admit only trustworthy evidence. The hearing committee shall not rely upon any evidence outside the formal record in reaching its decision.

(c) *Review by Board and Supreme Court.* Upon receipt of a report from a hearing committee, the Board shall set the dates for submission of briefs and for oral argument before the Board. The Board shall promptly either affirm or modify the recommendation of the hearing committee, remand the matter for further proceedings before the hearing committee or dismiss the petition. In the event that the Board determines that the proceeding should be concluded by private reprimand, if the respondent shall consent thereto he shall appear before the Board at a time fixed by the Chairman and the Chairman shall deliver the reprimand. Unless the Board shall dismiss or remand the petition or the matter is concluded by private reprimand with the consent of the respondent, the Board shall promptly submit a report containing its findings and recommendations, together with the entire record, to the supreme court. After the filing of such report a copy thereof shall be served on the respondent. The respondent may file exceptions to the report within 20 days from the date of service of a copy thereof or within an additional period not to exceed 20 days granted by the court for good cause shown. Within 60 days after the filing of the report and the filing of exceptions, if any, the respondent shall file an opening brief pursuant to the rule governing civil appeals and other briefs may be filed and oral argument may be had as therein provided. Upon conclusion of the proceedings, the court shall promptly enter an appropriate order.

16.8 *Immunity.* Complaints submitted to the Board or Counsel or testimony given with respect thereto shall be absolutely privileged and no lawsuit predicated thereon may be instituted. Members of the Board, members of the hearing committees, Counsel and staff shall be immune from suit and liability for any conduct in the course of their official duties.

16.9 *Refusal of Complainant to Proceed, Compromise, Etc.* Neither unwillingness nor neglect of the complainant to sign a complaint or to prosecute a charge, nor settlement, compromise between the complainant and the attorney or restitution by the attorney, shall, in itself, justify abatement of the processing of any complaint.

16.10 *Matters Involving Related Pending Civil or Criminal Litigation.* Processing of complaints shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized by the Board in its discretion, for good cause shown.

16.11 *Service.*

(a) Service upon the respondent of the petition in any disciplinary proceeding shall be made by personal service by any person authorized by the Chairman of the Board, except that, in the event that the respondent cannot be found within the State or has departed therefrom, service may be made by registered or certified mail at his address shown in his registration statement filed pursuant to Rule 16.18 or other last known address.

(b) Service of any other papers or notices required by these rules shall be made in accordance with Rule 5 of the Hawaii Rules of Civil Procedure.

16.12 *Subpoena Power, Witnesses and Pre-trial Proceedings.* Any member of a hearing committee, in matters before it, and Counsel, in matters under investigation by

him may administer oaths and affirmations and, subject to HRCP Rule 45(b), compel by subpoena the attendance of witnesses and the production of pertient books, papers and documents. A respondent may, subject to HRCP Rule 45(b), compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents before a hearing committee, after formal disciplinary proceedings are instituted. Writs of subpoena shall be issued in blank by the clerk of this Court upon applicaion by any member of a hearing committee, Counsel or the respondent. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required may, upon proper application, enforce the attendance and testimony of any witness and the production of any documents so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts.

There shall be no discovery proceedings except upon the order of the Chairman of the Board for good cause shown but subject, however, to HRCP Rule 26(c).

At the discretion of the hearing committee, a conference may be ordered for the purpose of obtaining admissions or otherwise narrowing the issues presented by the pleadings. Said conference may be held before the chairman of the committee or any member of the committee designated by its chairman.

16.13 *Attorneys Convicted of Crimes.*

(a) Upon the filing with this court of a certificate of a clerk of court demonstrating that an attorney has been convicted (certificate of conviction) of a crime which is, or if it had been committed in Hawaii would have been, a felony or which involves dishonesty or false statement, this court shall enter an order immediately restraining the attorney from engaging in the practice of law, whether the conviction resulted from a plea of guilty or nolo contendere

or from a verdict after trial or otherwise and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Upon good cause shown, the court may set aside such order restraining the attorney from engaging in the practice of law when it appears to be in the interest of justice so to do. An order restraining an attorney from the practice of law shall not constitute a suspension of the attorney for the purposes of Rule 16.16 unless this court shall so order. Upon being informed that an attorney has been convicted of a crime above described, Counsel shall obtain a certificate of the conviction and file the same with the Board and with the clerk of this court.

(b) The final conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him based upon the conviction. For purposes of this Rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted and the time for filing a petition for certiorari in the United States Supreme Court on direct review of the judgment of conviction has elapsed and no petition has been filed, or if filed the petition has been denied or the judgment of conviction has been affirmed.

(c) Upon the receipt of a certificate of conviction of an attorney of a crime described in (a) above, whether or not the attorney shall be restrained from the practice of law, this court shall refer the matter to the Board for the institution of a formal proceeding in which the sole issue to be determined shall be the extent of the discipline to be imposed, provided that a disciplinary proceeding so instituted shall not be brought to hearing until the judgment of conviction is final, unless the respondent shall so request.

(d) Immediately upon the filing with this court of a certificate demonstrating that the underlying conviction for a crime has been reversed, any order entered under the provisions of (a) above restraining the attorney from

the practice of law shall be vacated, any formal proceeding then pending against the attorney founded solely upon such conviction shall be terminated and any discipline imposed in any such formal proceeding shall be vacated, but the reversal of the conviction shall not terminate or affect any formal proceeding previously or thereafter instituted founded upon alleged misconduct by the attorney, whether or not involving the same facts alleged to constitute the crime or offense of which the attorney was convicted.

16.14 *Disbarment by Consent of Attorneys Under Disciplinary Investigation or Prosecution.*

(a) An attorney who is the subject of an investigation into, or a pending proceeding involving, allegations of grounds for his discipline may consent to disbarment, but only by delivering to the Board an affidavit stating that he desires to consent to disbarment and that:

(1) his consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting his consent;

(2) he is aware that there is a presently pending investigation into, or proceeding involving, allegations that there exist grounds for his discipline the nature of which he shall specifically set forth;

(3) he acknowledges that the material facts so alleged are true; and

(4) he submits his consent because he knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, he could not successfully defend himself.

(b) Upon receipt of the required affidavit, the Board shall file it with this court and this court shall enter an order disbarring the attorney on consent.

(c) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of (a) above shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

16.15 *Reciprocal Discipline.*

(a) All attorneys subject to the provisions of this Rule shall, upon being subjected to professional disciplinary action in another jurisdiction, promptly inform Counsel of such action. Upon being informed that an attorney subject to the provisions of these Rules has been subjected to discipline in another jurisdiction, Counsel shall obtain a certified copy of such disciplinary order and file the same with the Board and with this court.

(b) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this State has been disciplined in another jurisdiction, this court shall forthwith issue a notice directed to the attorney containing: (1) a copy of said order from the other jurisdiction; and (2) an order directing that the attorney inform the court, within 30 days from service of the notice, of any claim by the attorney that the imposition of the identical discipline in this State would be unwarranted and the reasons therefor.

(c) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (b) above, this court shall impose the identical discipline unless Counsel or the attorney demonstrates, or this court finds that upon the face of the record upon which the discipline is predicated it clearly appears, (1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or (2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that

subject; or (3) that the misconduct established warrants substantially different discipline in this State. Where this court determines that any of said elements exist, this court shall enter such other order as it deems appropriate.

(d) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State.

16.16 *Disbarred or Suspended Attorneys.*

(a) A disbarred or suspended attorney shall promptly notify by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of his disbarment or suspension and his consequent inability to act as an attorney after the effective date of his disbarment or suspension and shall advise said clients to seek legal advice elsewhere.

(b) A disbarred or suspended attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, each of his clients who is involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of his disbarment or suspension and consequent inability to act as an attorney after the effective date of his disbarment or suspension. The notice to be given to the client shall advise the client of the desirability of the prompt substitution of another attorney or attorneys in his place.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, it shall be the responsibility of the disbarred or suspended attorney to move in the court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the disbarred or suspended attorney.

(c) Orders imposing suspension or disbarment shall be effective 30 days after entry. The disbarred or suspended attorney, after entry of the disbarment or suspension order, shall not accept any new retainer or engage as attorney for another in any case or legal matter of any nature. However, during the period from the entry date of the order and its effective date he may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(d) Within ten days after the effective date of the disbarment or suspension order, the disbarred or suspended attorney shall file with this court an affidavit showing: (1) that he has fully complied with the provisions of the order and with these Rules; (2) all other state, federal and administrative jurisdictions to which he is admitted to practice; and (3) that he has served a copy of such affidavit upon Counsel. Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications may thereafter be directed to him.

(e) The Board shall cause a notice of the suspension or disbarment to be published in a newspaper of general circulation in the judicial circuit in which the disciplined attorney maintained his practice.

(f) The Board shall promptly transmit a certified copy of the order of suspension or disbarment to all judges of the State of Hawaii, and the administrative judge of each judicial circuit shall make such further order as he deems necessary to fully protect the rights of the clients of the suspended or disbarred attorney.

(g) A disbarred or suspended attorney shall keep and maintain records of the various steps taken by him under these Rules so that, upon any subsequent proceeding instituted by or against him, proof of compliance with these Rules and with the disbarment or suspension order will be

available. Proof of compliance with these Rules shall be a condition precedent to any petition for reinstatement.

16.17 *Reinstatement.*

(a) No suspended or disbarred attorney may resume practice until reinstated by order of this court except as provided in Rule 16.18.

(b) A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least two years from the effective date of the disbarment. An attorney suspended from practice may not apply for reinstatement until the expiration of at least one half of the period of suspension.

(c) Petitions for reinstatement by a disbarred or suspended attorney shall be filed with the Board and served upon Counsel. Upon receipt of the petition the Board shall refer the petition to a hearing committee. The hearing committee shall promptly schedule a hearing at which the petitioner shall have the burden of demonstrating that he is qualified to practice law in this State and worthy of the court's trust and confidence. At the conclusion of the hearing, the hearing committee shall promptly submit to the Board a report containing its findings and recommendations, together with the record of the proceedings before it. The Board shall review the report of the hearing committee and the record and shall submit a report containing its findings and recommendations, together with the record, to this court, which shall promptly enter an appropriate order.

(d) This court shall direct that the necessary expenses incurred in the investigation and processing of a petition for reinstatement be paid by the petitioner.

16.18 *Periodic Assessment of Attorneys.*

(a) Every attorney admitted to practice before this court shall pay to the clerk of this court an annual fee for

each fiscal year beginning July 1 to be set by the court from time to time which shall be administered and used by this court to defray the costs of disciplinary administration and enforcement under these Rules. The annual fee until further order of the court shall be:

| After Date of Admission to Practice Law | Annual Fee |
|---|---|
| First Year, or portion thereof | $10.00 |
| Second Year | 20.00 |
| Third Year | 30.00 |
| Fourth Year | 40.00 |
| Fifth Year | 45.00 |
| Sixth Year | 50.00 |
| Seventh Year | 55.00 |
| Eighth Year | 60.00 |
| Ninth Year and thereafter | 65.00 |

(b) Full-time judges shall be exempt from the payment of such fee for such time as they serve in office.

(c) Any attorney who fails to pay the fee required under (a) above shall be summarily suspended, provided a notice of delinquency has been forwarded to him by certified mail addressed to his last known business address at least 30 days prior to such suspension.

(d) Any attorney suspended under the provisions of (c) above shall be reinstated without further order upon payment of all arrears and a penalty of 20% of the amount due from the date of his last payment to the date of his request for reinstatement.

(e) To facilitate the collection of the annual fee provided for in (a) above, all persons required by this Rule to pay an annual fee shall, on or before July 15 of every year, commencing 1974, file with the clerk of this court a registration statement, on a form prescribed by this court, setting forth his current residence and office ad-

dresses and such other information as this court may from time to time direct. In addition to such statement, every attorney shall file with the clerk of this court a supplemental statement of any change in the information previously submitted within 30 days of such change. All persons first becoming subject to these Rules by admission to the practice of law before the courts of this State after July 1, 1974, shall file the statement required by this Rule at the time of admission; such admittee will pay for the year of admission the annual fee provided in subsection (a).

(f) Within 30 days of the receipt of a statement or supplement thereto filed by an attorney in accordance with the provisions of (e) above, the clerk of this court shall acknowledge receipt thereof, on a form prescribed by this court, in order to enable the attorney on request to demonstrate compliance with the requirements of (a) and (e) above.

(g) Any attorney who fails to file the statement or supplement thereto in accordance with the requirements of (e) above shall be summarily suspended; provided a notice of failure to file the statement or supplement thereto has been forwarded to him by certified mail addressed to his last known business address at least 30 days prior to such suspension. He shall remain suspended until he shall have complied therewith, whereupon he shall be reinstated without further order.

(h) An attorney who has retired or is not engaged in practice shall advise the clerk of this court in writing that he desires to assume inactive status and discontinue the practice of law. Upon the filing of such notice, the attorney shall no longer be eligible to practice law. An attorney who is retired or on inactive status shall not be obligated to pay the annual fee imposed by this Rule upon active practitioners.

(i) Upon the filing of a notice to assume inactive status, an attorney shall be removed from the roll of those

classified as active until and unless he requests and is granted reinstatement to the active rolls. Reinstatement shall be granted, unless the attorney is subject to an outstanding order of suspension or disbarment, upon the payment of any assessment in effect for the year the request is made and any arrears accumulated prior to transfer to inactive status.

16.19 *Proceedings Where an Attorney is Declared to be Incompetent or is Alleged to be Incapacitated.*

(a) Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, this court, upon proper proof of the fact, shall enter an order transferring such attorney to inactive status effective immediately and for an indefinite period until the further order of this court. A copy of such order shall be served upon such attorney, his guardian, and/or the director of the institution to which he has been committed in such manner as this court may direct.

(b) Whenever the Board shall petition this court to determine whether an attorney is incapacitated from continuing the practice of law by reason of mental infirmity or illess or because of the use of drugs or intoxicants, this court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as this court shall designate. If, upon due consideration of the matter, this court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring him to inactive status on the ground of such disability for an indefinite period and until the further order of this court. Any pending disciplinary proceeding against an attorney shall be held in abeyance.

This court shall provide for such notice to the respondent-attorney of proceedings in the manner as it deems

proper and advisable and shall appoint an attorney to represent the respondent if he is without adequate representation.

(c) If, during the course of a disciplinary proceeding, the respondent contends that he is suffering from a disability by reason of mental or physical infirmity or illness, or because of the use of drugs or intoxicants, which makes it impossible for the respondent to defend himself adequately, this court thereupon shall enter an order immediately transferring the respondent to inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of (b) above.

If this court shall determine that the respondent is not incapacitated from practicing law, it shall take such action as it deems proper and advisable including a direction for the resumption of the disciplinary proceeding against the respondent.

(d) The Board shall cause a notice of transfer to inactive status to be published in a newspaper of general circulation in the judicial circuit in which the disabled attorney maintained his practice.

(e) The Board shall promptly transmit a certified copy of the order of transfer to inactive status to all judges of the State of Hawaii and shall request such action under the provisions of Rule 16.20 as may be indicated in order to protect the interests of the disabled attorney and his client.

(f) No attorney transferred to inactive status under the provisions of this Rule may resume active status until reinstated by order of this court. Any attorney transferred to inactive status under the provisions of this Rule shall be entitled to apply for reinstatement to active status once a year or at such shorter intervals as this court may direct in the order transferring the respondent to inactive

status or any modification thereof. Such application shall be granted by this court upon a showing that the attorney's disability has been removed and he is fit to resume the practice of law. Upon such application, this court may take or direct such action as it deems necessary or proper to a determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as this court shall designate. In its discretion, this court may direct that the expense of such examination shall be paid by the attorney.

Where an attorney has been transferred to inactive status by an order in accordance with the provisions of (a) above, and, thereafter, in proceedings duly taken, he has been judicially declared to be competent, this court may dispense with further evidence that his disabiliy has been removed and may direct his reinstatement to active status upon such terms as are deemed proper and advisable.

(g) The filing of an application for reinstatement to active status by an attorney transferred to inactive status because of disability shall be deemed to constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of his disability. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician and hospital or other institution by whom or in which the attorney has been examined or treated since his transfer to inactive status and he shall furnish to this court written consent to each to divulge such information and records as requested by court-appointed medical experts.

16.20 *Appointment of Counsel to Protect Clients' Interests When Attorney Disappears, Dies or is Transferred to Inactive Status Because of Disability.*

(a) Whenever an attorney has been transferred to inactive status because of incapacity or disability, or dis-

appears or dies, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the circuit court of any circuit in which such attorney maintained an office, upon proper proof of the fact, shall appoint an attorney or attorneys to inventory the files of the inactive, disappeared, or deceased attorney and to take such action as seems indicated to protect the interests of the inactive, disappeared or deceased attorney and his clients.

(b) Any attorney so appointed shall not be permitted to disclose any information contained in any files so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order of the court which appointed the attorney to make such inventory.

16.21 *Expenses.* The salaries of Counsel and staff, their expenses, administrative costs, and the expenses of the members of the Board and of hearing committees shall be determined by the court and be paid by the clerk of this court or as further directed by this court out of the funds collected under the provisions of Rule 16.18. The Board shall make recommendations to the court relative to said salaries, expenses and administrative costs and other pertinent matters.

16.22 *Confidentiality.* All proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential until and unless this court enters its order for the imposition of public discipline or the respondent requests that the matter be public or the investigation is predicated upon a conviction of the respondent for a crime or, in matters involving alleged disability, this court enters an order transferring the respondent to inactive status pursuant to Rule 16.19. This provision shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, or to other jurisdictions investigating

qualifications for admission to practice or to law enforcement agencies investigating qualifications for government employment. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. In addition, the Board shall transmit notice of all public discipline imposed by the supreme court, or transfer to inactive status due to disability, to the National Discipline Data Bank maintained by the American Bar Association.

16.23 *Effective Date.* These Rules shall become effective on July 1, 1974, and any disciplinary investigation pending on that date shall be transferred to the Board, provided that any case then pending with respect to which a formal hearing has been commenced shall be concluded under the procedure existing prior to the effective date of these Rules.

DATED: Honolulu, Hawaii, December 27, 1973.

(SEAL)

/s/ WILLIAM R. RICHARDSON

/s/ THOS. MARUMOTO

/s/ KAZULISAN ABE

/s/ BERNARD H. LEVINSON

/s/ BERT T. KOBAYASHI